



New Jersey Department of Children and Families Policy Manual

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SPECIAL NOTE

3-28-2017

For Human Resources forms, see the Department of Children and Families Home Page > Human Resources > Forms.

For Human Resources-related policies, see the Department of Children and Families Home Page > Human Resources > Administrative Policies or Volume III, Administrative Policies, in the DCF-Wide Policies section of this manual.

Representation of Employee by the Attorney General - In Accordance with A.O. 3:01

Introduction

2-26-91

Generally there are two types of legal actions that may be instituted against a CP&P employee. A civil action is usually brought by a private citizen seeking money or “damages” as compensation for injury or loss resulting from an intentional or negligent act or omission on the part of a CP&P employee. Criminal action results from a criminal complaint or a grand jury indictment based upon alleged criminal conduct on the part of the employee. All references to “employee” also apply to a former employee against whom a criminal or civil action occurs because of acts or omissions which happened during employment by CP&P and to volunteers who perform services for the State of New Jersey and are duly authorized to perform these services, even though uncompensated.

Note: An employee who uses his own car for purposes related to his employment is required to have his personal coverage be responsible for claims brought against him. However, the Attorney General’s assistance may be needed in addition to the primary coverage. It is important, therefore, that the employee file for representation and indemnification from the State, as outlined in this section.

Civil Action

2-26-91

Representation

2-26-91

Under New Jersey law (N.J.S.A. 59:10A-1) the Attorney General shall provide representation, upon request, for any employee against whom a civil action is brought on account of an act or omission in the scope of his employment. The Attorney General may refuse to represent the employee if he determines that any one of the following circumstances exists:

- the act or omission was not within the scope of employment;
- the act or the failure to act was because of actual fraud, willful misconduct or actual malice;
- the defense of the action or proceeding by the Attorney General would create a conflict of interest between the State and the employee.

When representation is provided, it may be by a member of the Attorney General's staff or by private counsel selected by the Attorney General.

Indemnification (payment of damages)

2-26-91

When the Attorney General provides representation for an employee in a civil action, the State will indemnify the employee. This means that any money judgment rendered against the employee will be paid by the State except for some punitive or exemplary damages depending upon the case. These are damages awarded to the plaintiff over and above actual compensation for his loss, which may be levied as punishment against the defendant. The State will not pay any damages resulting from the commission of a crime. See Recourse Upon Refusal to Provide Representation, for other circumstances in which indemnification may be provided.

The employee's entitlement to indemnification is lost "...unless within 10 calendar days of the time he is served with any summons, complaint, process, notice, demand or pleading, he delivers the original or a copy thereof to the Attorney General or his designee." It is imperative that employees promptly follow the procedures below for notifying OLRL of legal actions and requesting representation.

Acceptance of Service

2-26-91

When an attempt is made to serve a summons and complaint upon an employee, the employee must look at the portion of the papers that identifies the parties who are being sued or "named" in the action. Only if the employee is named (singly or with other defendants such as the State or CP&P) may he accept service. No employees are authorized to accept service on behalf of CP&P or

the State.

If there is confusion about the action (civil or criminal) or if the employee should accept service, the employee contacts the assigned Deputy Attorney General.

Procedure for Requesting Representation

12-5-2001

Upon receiving a summons, complaint, notice of claim or other legal papers, the employee must notify his supervisor and the Office of Legal Regulatory Liaison (OLRL). The following materials are forwarded immediately to OLRL, with a copy to the Local Office Manager and appropriate Assistant Director, Program/Adoption Operations:

- a written request for representation and indemnification, i.e., compensation for damages, by the employee, also signed by the supervisor indicating approval of the request;
- the originals of all documents served on the employee; and
- a description of the events involved, which responds to any allegations or accusation raised by the legal papers and states that the actions (or omissions) taken by the employee were within the scope of his employment and there was no fraud, misconduct or actual malice involved in the employee's actions (or omissions).

The employee keeps copies of all these documents.

OLRL makes an initial determination whether the action is based upon an act or omission within the scope of employment. If it is so determined, OLRL prepares a memo for the CP&P Director's signature supporting the employee's request, stating a belief that the employee's actions meet the statutory qualifications and providing any other relevant information. If it appears that the action is not job-related and that a request for representation may not be appropriate, OLRL contacts the employee and/or supervisor to discuss the matter. If the employee continues to believe that he is entitled to representation, his request is sent to the Attorney General by OLRL.

Recourse upon Refusal to Provide Representation

5-6-94

When the Attorney General has refused to provide for the defense of a civil action for one of the reasons noted under, Representation, the employee may later receive reimbursement for the costs of defending the action and the amount of any bona fide settlement, agreement, or award of damages if the employee establishes that he was entitled to a defense. This will occur if:

- the employee establishes that the incident in question occurred within the scope of employment, and

- the State fails to establish that the employee acted or failed to act because of actual fraud or malice or willful misconduct.

The payment by the State of judgments or damages is limited to actual damages as discussed in Indemnification (payment of damages).

Criminal Action

4-15-91

Representation

4-15-91

Under New Jersey law (N.J.S.A. 10A-3), the Attorney General may represent an employee against whom criminal charges are brought if he concludes that such representation is in the best interests of the State. This representation may be provided by the Attorney General's office directly or by outside counsel selected by that office. The Attorney General is responsible for deciding whether to supply representation and has issued the following statement in this regard:

"Although the facts of each individual case may be examined to determine whether the State should provide representation to an employee accused of a criminal or disorderly persons offense, the State ordinarily will provide representation in the following cases:

- Where the complaint was filed in bad faith or is totally lacking in substance; or
- Where the complaint was filed as a means of harassing the State official in the performance of his official duties; or
- Where the subject matter of the complaint calls a fundamental interest of the State of New Jersey into question which must be defended; or
- Where the criminal or disorderly complaint or proceeding is filed or initiated by a citizen and not an enforcement official; or
- Where other special reasons or circumstances exist to warrant representation."

Request for Representation

12-5-2001

Pursuant to Administrative Order 3:01, the procedure for requesting representation in criminal matters is the same as that for civil action, with written request for representation, all legal papers served, and a full description of the events being sent to OLRL with copies to the appropriate Assistant Director, Program/Adoption Operations. OLRL makes an initial evaluation, for the CP&P Director with input from supervisory staff.

OLRL prepares a memo for the CP&P Director with recommendations regarding the employee's request for

representation by the Attorney General. OLRL sends the memo and the employee's request through the CP&P Director to the Department. The Department, in turn, forwards the request to the Attorney General's Office.

The Attorney General has the final authority to approve or deny the employee's request. When the request is approved, the employee and OLRL each receive a written notification that includes the name of the private attorney designated to handle the matter. When the request is denied, the Attorney General puts the determination in writing and provides notice to the employee and OLRL. All decisions will be orally communicated, with documentation to follow, in instances where time is of the essence.

The worker advises his supervisor of the approval or denial. The supervisor reports the approval or denial to higher level supervisory staff.

Fines and Penalties

4-15-91

The indemnification available in civil actions (i.e., payment of compensatory damages and discretionary payment of punitive damages) is not available in most cases to employees involved in any criminal case. The Tort Claims Act (N.J.S.A. 59:10-1 et seq.) does not require the State to pay for punitive or exemplary damages resulting from the commission of a crime.

Therefore, any employee convicted of a crime is solely responsible for payment of any penalty or fine imposed.

After-hours Coverage

12-5-2001

An employee should contact SCR immediately upon learning of a job related civil or criminal arrest of a staff person that occurs after hours. SCR, in turn, reports to on-call supervisors so that the appropriate Assistant Director, Program/Adoption Operations and Senior Staff person are notified. Senior staff then determine what actions are appropriate and available.

The Attorney General's Office does not provide representation on any type of emergency basis for employees who are arrested or threatened with criminal arrest after hours. This is because representation in criminal matters is discretionary on the part of the Attorney General and certain questions regarding the case (outlined under Representation) must be answered prior to any determination to defend the employee. In emergencies, employees are advised to make any necessary private arrangements with lawyers or bail bondsmen and also contact their supervisor and OLRL the next working day. State statutes and policies do not guarantee reimbursement of the costs of such private arrangements. However, the Attorney General has issued the

following statement:

“A public employee who has himself retained private counsel in a criminal matter where an acquittal or dismissal has occurred may request the State to pay for all or a part of the cost of his private counsel. Such a request must be approved by the Attorney General personally and by the Attorney General personally and by the head of the employing agency before payment will be made.”

While not specifically stated in the Attorney General’s guidelines, it is unlikely that this reimbursement will be approved if the employee did not request representation from the Attorney General at the outset. Since reimbursement under this provision is not automatic and would not occur until some time after the conclusion of the criminal matter, employees must assume responsibility for the costs of private counsel in this situation.

Cooperation with the Attorney General

11-19-92

When the Attorney General provides for the defense of a civil or criminal matter on behalf of an employee, the Attorney General has the right to control the defense and the employee has an obligation to cooperate fully with the defense.

Reimbursement of Defense Costs

11-19-92

Pursuant to N.J.S.A. 59:10A-3, an employee may request reimbursement for defense costs when the final decision is in favor of the employee and when the employee was previously denied representation by the Attorney General. The employee follows procedures to request reimbursement.

The Attorney General reviews the request and determines whether the claim qualifies for reimbursement under the terms of the statute. Specifically, a determination is made as to whether the occurrence arose out of or was directly related to the “lawful exercise” of the employee’s official duties conducted within the scope of his employment. The Attorney General makes the final determination about the reimbursement request, providing there is no outstanding litigation regarding the matter.

If the employee’s private counsel is reimbursed, the amount is calculated pursuant to the Office of the Attorney General’s documented fee schedule for private counsel in criminal matters. When selecting his own attorney, the employee should be aware of this presumption and know that there is an established fee schedule used by the Attorney General’s office.

Expunging Arrest Records

11-19-92

The Attorney General provides counsel to represent employees or

former employees of the State in connection with erasing arrest records when:

- an employee or former employee of the State who has been arrested or charged with a crime was successfully defended (i.e., acquitted or charges dismissed) by the Attorney General or his/her representative, pursuant to N.J.S.A. 59:10A-1 et seq., AND
- the procedures here in are followed.

If the employee's request for Attorney General representation is denied, he may proceed with an application to expunge by hiring private counsel at his own expense.

Procedures to Expunge Arrest Records

10-17-91

Responsibility	Action Required
Employee	1. Make a written request to the CP&P Office of Legal and Regulatory Liaison through the office of the CP&P Director asking for the Attorney General to provide counsel to process an application to expunge such record.
OLRL	2. Review the request and ascertain that the employee was acquitted of the charge or that it was finally dismissed in favor of the employee.
CP&P Director	3. Determine whether representation should be furnished; or request should be denied if it is prudent to preserve documentation of the charges in the employee's criminal record
LRL	4. When the CP&P Director believes that representation should be furnished, prepare a request on the Office of the Attorney General Form, "Agency Request For Appointment of

	<p>Counsel to Expunge Criminal Record of Employee” (Attachment A) and forward to the DCF Office of Legal and Regulatory Liaison. Include in the request an authorization to the Attorney General to obtain a criminal history record of such employee from the appropriate official sources of such information.</p> <p>5. Review and approve the request and forward to the Office of the Attorney General, Director of Administration.</p>
Attorney General or Designee	<p>6. Obtain a criminal history record of the employee</p> <p>7. In the event that the employee’s criminal history record reveals other objectionable matters, determine whether the request should be denied. If so, inform the Commissioner, by means of the Office of Legal and Regulatory Liaison.</p> <p>8. When appropriate, employ and refer to private counsel the request for an application to expunge, together with the appropriate form of Petition and Order. Whenever possible, refer the application to the attorney who represented the employee in conjunction with the arrest or charge which is to be expunged.</p>
Designated Attorney	<p>9. File a Petition and proposed Order to Expunge with the court and serve notice upon such law enforcement agencies as are appropriate. When filing the Petition, inform the court that the</p>

	<p>Petition has been filed on behalf of a State employee at the request of the Attorney General and, unless another law enforcement agency shall object to the granting of the Petition, request that no court hearing shall be required.</p> <p>10. Forward a conformed copy of the Order to the Office of the Attorney General, together with an invoice for payment for services. Unless a court hearing was required, the fee for these services shall be \$75.00 plus disbursements.</p> <p>11. In the event that a hearing is ordered by the court, notify the Office of the Attorney General in advance of the hearing. Any additional fee is paid to the attorney only under such circumstances and is in an amount as shall be mutually agreed upon at that time.</p>
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3. OLRL

PROCEDURES FOR REPRESENTATION OF STATE EMPLOYEES ASSAULTED OR THREATENED IN THE COURSE OF THEIR OFFICIAL DUTIES 6-15-2005

Responsibility	Action Required
Employee	<p>1. Seek assistance from municipal or county prosecutor located in area where incident occurred, when assaulted or threatened in the course of your official duties. Notify supervisor about incident and State Central Registry if the incident occurs after hours.</p>

Employee/Supervisor	2. Create and retain file with documentation on incident. The documentation in the file may include a copy of the original police report if one was filed; copies of any subsequent police reports; a copy of the completed CP&P Form 21-10 , Critical Incident Report; copies of any medical records; and any pictures.
Employee	3. Notify Office of Legal and Regulatory Liaison (OLRL) in Division's Central Office about incident. Send a copy of the file with a brief memo describing the incident.
Office of Legal Affairs	4. Create and retain a file with documentation on the incident.
Employee/Supervisor	5. Contact OLRL if municipal or county prosecutor provides no assistance. 6. Contact OLRL if municipal or county prosecutor provides no assistance.
Office of Legal Affairs	7. Decide appropriate action. Proceed as applicable.

Administrative Order 3:01 - Representation and Indemnification of Employees, Expungement of Arrest Records, and Timely Forwarding of Legal Papers

5-6-94

The purpose of Administrative Order 3:01 is to establish policies and procedures regarding:

- Representation and Indemnification of Employees,
- Expunging Arrest Records, and
- Timely Forwarding of Legal Papers.